Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   OPR, MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession. The hearing was conducted via teleconference and was attended by the landlord, his legal counsel and both tenants.

During the hearing the parties confirmed that the tenancy began as a rent to own situation and as such, prior to adjudicating the landlord's Application for Dispute Resolution I must determine whether or not I have jurisdiction over the matters outlined in the landlord's Application.

There is a general legal principle that places the burden of proving a loss on the person who is claiming compensation for the loss. In regards to a claim for unpaid rent and in determining whether a tenancy should end as the result of the non-payment of rent the burden of proving the *Residential Tenancy Act (Act)* applies is predicated on whether or not a tenancy exists. As such, as the landlord is seeking to end a tenancy and making the claim for lost rent the burden rests with him to establish the parties have entered into a tenancy agreement.

The parties agree they originally entered into a verbal rent-to-own agreement. The landlord submitted the subject property was purchased by the landlord (the male tenant's father) by providing a $50,000.00 deposit and financing the balance of the cost of the property; the tenants put down $4,000.00 and were to pay the landlord $500.00 per month towards the purchase and $500.00 per month towards rent.

The landlord submits that when the tenants started paying only $500.00 per month on April 30, 2014 the rent-to-own arrangement converted to a tenancy arrangement that would fall under the jurisdiction of the *Act*.

The tenants submit that the *Act* does not apply because the agreement is still a rent-to-own agreement and that they started paying only $500.00 by agreement with the landlord. They submit they stopped paying the full amount because the landlord wanted the tenants to paint his truck, a job that would have cost $8,000.00.

Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Section 13 of the *Act* stipulates that the landlord is required to prepare a tenancy agreement in writing and that he must, within 21 days after the parties enter into a tenancy agreement, provide the tenant with a copy of the tenancy agreement.

When two parties provide equally plausible but differing accounts of an agreement, the party with the burden of proof must provide additional evidence to establish their position. In this case, the landlord has failed to provide a copy of either a tenancy agreement; a rent-to-own agreement; or any other corroborating evidence.

In the absence of any such evidence to support the landlord's position that the parties had a rent-to-own agreement or that the tenants breached any terms of that agreement that would convert the rent-to-own agreement into a tenancy agreement that would fall within the jurisdiction of the *Act*, I find the landlord has failed to establish that a tenancy, as defined under the *Act*, exists.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent; to a monetary order for unpaid rent and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 46, 55, 67, and 72 of the *Act.*

Conclusion

Based on the above, I decline jurisdiction on these matters and dismiss the landlord's Application for Dispute Resolution in its entirety. I note the landlord remains at liberty to pursue his claims through a court of competent jurisdiction.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: August 19, 2015

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Residential Tenancy Branch